Supreme Court, U.S.
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NO. 97-1748.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALFRED RASO, ET AL.,

Petitioners,

v.

MARISA LAGO, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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June 26, 1998

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

35 pp

QUESTION PRESENTED

Whether the United States Court of Appeals for the First Circuit correctly decided that no constitutional violation occurred when the government conditioned the use of federal funds for an apartment building on the requirement that "some of the apartments — which otherwise would have almost automatically been occupied by whites — be made available to all applicants on a race-blind basis."

LIST OF PARTIES

PETITIONERS: ALFRED J. RASO
JOAN BELINSKI CALABRO
FRANK LEVINE
THEODORE RICHARD NEDD
on behalf of themselves and all other displaced persons from the West End.

RESPONDENTS: MARISA LAGO
THE BOSTON REDEVELOPMENT AUTHORITY
HENRY CISNEROS
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THOMAS A. MENINO
THE CITY OF BOSTON
VICTORIA L. WILLIAMS
THE BOSTON FAIR HOUSING COMMISSION
SANDRA HENRIQUEZ
THE BOSTON HOUSING AUTHORITY
ROBERT H. KUEHN
KEEN DEVELOPMENT CORPORATION
LOWELL SQUARE NOMINEE TRUST
THE REVEREND MICHAEL F. GRODEN
PLANNING OFFICE FOR URBAN AFFAIRS INC.
LOWELL SQUARE ASSOCIATES, JOINT VENTURE
LOWELL SQUARE COOPERATIVE LIMITED PARTNERSHIP
MALONEY PROPERTIES, INC.
MARK MALONEY

RESPONDENTS' CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the following disclosure is made regarding parent companies and non-wholly owned subsidiaries of the Developer Respondents:

Planning Office for Urban Affairs Inc. is a non-profit corporation of which Bernard Francis Cardinal Law, Roman Catholic Archbishop of Boston, a Corporation Sole, is the sole member.

Keen Development Corporation has no parent company. The following is a list of its non-wholly owned subsidiaries: Academy Hill Associates, L.P.; Chelsea Campus Associates, L.L.C.; Craigie Arms Associates, L.P.; Crimson Associates, L.P.; Fig Factory Associates, L.P.; Jamaica Plain Associates, L.P.; Kennedy Lofts Associates, L.P.; Lincoln House Associates, L.P.; Lower Mills Associates, L.P.; Lower Mills Associates II, L.P.; Peerless/Keen Partners; Smith/Keen Partners; Warren House Associates; Warren House Associates, L.P.

No other corporation which is a Respondent in this case has either a parent company or non-wholly owned subsidiary which is not also a party.

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No. 97-1748.

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OPINIONS BELOW

In a Memorandum and Order dated January 6, 1997, the United States District Court for the District of Massachusetts, dismissed petitioners' claims prior to any application for class certification. Petition Appendix ("Pet. App.") at 22a.

In an Opinion dated January 27, 1998, the First Circuit Court of Appeals affirmed the decision of the District Court.

Pet App. at 63a. The Court of Appeals held that HUD's decision to limit the preference for former West Enders in order to insure that not all of the apartments being subsidized would automatically be occupied by only white residents did not constitute a "racial classification" triggering strict scrutiny. The Court of Appeals further held that the Complaint alleged no facts suggesting that HUD's decision was motivated by any purpose other than a legitimate interest in compliance with HUD's obligations to promote integrated housing through its funding programs. Finally, the Court of Appeals rejected petitioners' claim under state law that the statutory preference created a "trust" for the benefit of the former West Enders.

STATEMENT OF THE CASE

Nearly thirty years following adoption of an urban renewal plan for the area, the Boston Redevelopment Authority ("BRA") awarded the entities referred to by the Court of Appeals as the "[D]eveloper" defendants the right to develop the West End Place Project in Boston's West End. One of the conditions imposed by the BRA in the designation was that "[p]urchase (and/or rental) preference shall be afforded to former West Enders (*subject only to applicable local, state, and federal laws, including but not limited to fair housing laws*)." (Emphasis added.) This requirement mirrored the qualified preference accorded to persons displaced by urban renewal under the state urban renewal statute. Court of Appeals Appendix ("Ct. App. App.") at A214.

The West End Place Project was developed using substantial federal funding. *Id.* at A129-30, A145-47. For example, it includes low income units subsidized by funds from

HUD's Section 8 program. *Id.* at A129-130. The public funds were conditioned on the Developer's compliance with applicable fair housing laws. *Id.*

In an earlier, separate action, the NAACP brought suit against the Department of Housing and Urban Development ("HUD"). *NAACP* v. *Kemp*, 721 F. Supp. 361 (D. Mass. 1989). Following a trial and a finding of liability against HUD for violation of the Fair Housing Act for failing to condition use of federal funds on advancement of fair housing objectives, the action was eventually resolved by a consent decree. *Kemp*, 721 F. Supp. at 365. In the consent decree, HUD agreed to ensure, among other things, that affirmative fair housing marketing plans would be designed by owners of HUD-assisted projects in Boston and would have as their goal and measure of success the achievement in HUD-assisted housing located in neighborhoods which are predominantly white of a racial composition which reflects the racial composition of the City as a whole. The Decree provided that "[n]othing herein shall constitute or be construed as requiring a quota." *Id.* at A78-88.

In December 1994, the city, the former West Enders, HUD, NAACP and the BRA engaged in a mediation under the auspices of the City of Boston in an attempt to balance the former West Enders' asserted preference for units at West End Place, the commitments made by the Developer in obtaining designation as the Developer of the project and the competing federal and state laws and policies. *Id.* at A24. The mediator was a former United States Attorney. *Id.* He recommended that the former West Enders be given a preference of 55% of the units at West End Place. *Id.* at A144. The Developer, HUD and the BRA agreed to abide by the mediator's recommendation. The former West Enders refused. *Id.* at A134, A144.

The Developer marketed the Project according to an Affirmative Fair Housing Marketing Plan ("Marketing Plan") required by federal law. *Id.* at A121-27, A132. Under the Marketing Plan, the availability of housing at the development was affirmatively marketed to the public, including the former West Enders and minority communities. *Id.* at A134-35, A224-66. The Marketing Plan is required by the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, federal regulations including those at 24 C.F.R. § 200.600 *et seq.*, and the *Kemp* Consent Decree. App. at A83, A129.

The tenant selection procedure employed by the Developer was entirely race neutral. *Id.* at A134-39, A241-48. The marketing agent randomly assigned lottery numbers to all applicants without reference to race. *Id.* at A137-38, A151, 52. After the lottery, the applications were divided into two groups: one comprised of former West Enders and the other comprised of all other applicants. *Id.* at A137. The marketing agent then categorized applicants based solely on income level and, for low and moderate income units, family size. *Id.* at A138. The applicants with the lowest lottery numbers were invited to complete formal applications and were screened and matched with available units. *Id.* at A138. The former West End applicants were given preference to 55% of the units in the tenant selection process. *Id.* at A134. While the Developer marketed the Project pursuant to the Marketing Plan, the tenant selection process did not take into account the race of the applicant. *Id.* at A137-139.

Despite the Developer's commitment to give the former West Enders preference to 55% of the units, including low-income, moderate income and market units, the former West Enders continued to demand an absolute preference to every unit in the development. *Id.* at A31. In support of that position, Petitioners filed the instant action asserting that HUD's

refusal to agree to a one-hundred percent preference for former West Enders violated various federal constitutional and statutory provisions, as well as Massachusetts statutes and common law. In anticipation that there would be more interested former West Enders than available apartments under the fifty-five percent compromise, the Complaint sought, *inter alia*, injunctive relief setting aside all the apartments at West End Place for former West Enders.

In the end there was no such shortfall. At the conclusion of the tenant selection process, all the qualified former West Enders who desired an apartment received an apartment. *See* Appendix at 1a.

REASONS FOR DENYING THE WRIT

A. PETITIONERS' CLAIMS ARE MOOT AS NONE OF THE NAMED PLAINTIFFS IS SEEKING AN APARTMENT AT WEST END PLACE.

As described in the Affidavit of Mark Maloney, *see* Appendix at 1a, the claims of the petitioners are moot because none has a live controversy with respondents. In particular, none of the named plaintiffs is seeking an apartment at West End Place. Of the four named plaintiffs, one never applied for an apartment; one has requested that his application be withdrawn; and two have been removed from the waiting list for failure to respond to inquiries regarding their continued interest. *Id.* at ¶ 6. The latter two plaintiffs were removed pursuant to neutral rules of administration which have led to the removal of numerous applicants from both groups and which have not been challenged in this action. *Id.* at ¶ 5.

The Maloney Affidavit establishes that "a case or controversy no longer exists between the named plaintiffs" and respondents. *Board of School Commissioners of City of Indianapolis* v. *Jacobs*, 420 U.S. 128, 129 (1975). Because no class has ever been certified, the claims are moot. *See Jacobs*, 420 U.S. at 130. As a result, it would be improvident for the Court to consider a grant of *certiorari*.

It is settled law that where the named plaintiffs "no longer have any stake in [the] outcome," the action is moot. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 430 (1976). *Accord O'Shea* v. *Littleton*, 414 U.S. 488 (1974) (none of named plaintiffs suffered any injury from challenged practices). *Accord* Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 1785.1 ("if a class action is not properly certified prior to judgment being entered and the representative's claim becomes moot on appeal, then the action may be dismissed as moot").

B. EVEN THE CLAIMS OF ALL PUTATIVE CLASS MEMBERS ARE MOOT AS ALL QUALIFIED WEST ENDERS SEEKING APARTMENTS HAVE OBTAINED AN APARTMENT.

The Maloney Affidavit demonstrates not only that the claims of the named plaintiffs are moot, but that the same conclusion is dictated regarding the claims of all members of the putative class. In particular, "all of the qualified applicants in the lottery process who identified themselves as former residents of the West End have been offered apartments at West End Place." *See* Maloney Affidavit at ¶ 3, Appendix at 2a. In other words, the expected shortfall between the number of interested West Enders and the number of available apartments simply did not materialize.

Where petitioners have not "suffered some actual injury that can be redressed by a favorable judicial decision," no case or controversy exists. *Iron Arrow Honor Society* v. *Heckler*, 464 U.S. 67, 70 (1983). That is precisely the circumstance here because no ruling the Court could issue on the matter of petitioners' asserted "preference" would alter the number of West Enders occupying apartments. As a result, the Court lacks jurisdiction to decide the case. *Id.*[1]

Petitioners' claim for damages is equally moot. None of the former West Enders has been deprived of any compensable benefit. *See O'Shea, supra*, 414 U.S. at 494. In the end, all the qualified, interested former West Enders who participated in the lottery process obtained apartments at the same time as did the non-West End applicants. *See* Maloney Affidavit at ¶ 3, Appendix at 2a.

In addition to demonstrating the absence of a live controversy, the facts described in the Maloney Affidavit counsel against a grant of *certiorari* because they indicate that the claimed controversy is not a real dispute on any level. Because the West Enders who qualified for apartments have received them, there simply are no aggrieved parties. The Court has consistently held that it does not exercise its *certiorari* function in order to "satisfy a scholarly interest" in an issue. *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). The Court in *Rice* emphasized that this rule has particular force in the context of constitutional issues

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[1] Although it is unclear from the Petition whether the Old West End Housing Corporation ("OWEHC") is among the Petitioners seeking review in this Court, *see e.g.* Petition at 1, in the event the Court were to construe the Petition to encompass the claims of OWEHC, the same analysis would dictate the conclusion that the claims of the organization are likewise moot. *See Warth* v. *Seldin*, 422 U.S. 490, 510-17 (1975) (no organizational standing in absence of standing of members).

where the Court ordinarily has the "duty to avoid decision of constitutional issues." *Id.*

C. Petitioners Lack Standing to Assert the Claims Presented.

The fact that none of the named plaintiffs ended up pursuing an apartment at West End Place dictates another conclusion which counsels against granting a writ of *certiorari*: none of the petitioners even has standing to assert the claims in the Complaint. Simply stated, the petitioners have not manifested a desire to live at West End Place. As a result, they cannot establish an injury which is "actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Absent such a "real and immediate threat," *Los Angeles* v. *Lyons*, 461 U.S. 95, 105 (1983), petitioners cannot satisfy the Article III requirement of standing. As the Court held in *O'Shea* v. *Littleton, supra*, 414 U.S. at 494,

> if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class. [footnote omitted]

The failure of petitioners to meet this "threshold requirement," *O'Shea*, 414 U.S. at 493, constitutes an independent, and equally compelling, ground for denying the petition. *See Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 117 S.Ct. 1055, 1067 (1997) ("[t]he standing Article III requires

must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance").

D. THE COURT OF APPEALS PROPERLY REJECTED PETITIONERS' EQUAL PROTECTION CLAIM.

The Court of Appeals properly concluded that this is not a case about a race-conscious selection plan. *Compare Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995); *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469 (1988); *Wygant* v. *Board of Education*, 476 U.S. 267 (1986). In fact, it is not even a case about the use of race as a factor in selection of tenants. *Compare Regents of Univ. of California* v. *Bakke*, 438 U.S. 265 (1978). To the contrary, as the undisputed facts reflect, tenant selection at West End Place was conducted through the quintessentially race-neutral method of a *lottery*.

The only reference to race was in the adoption of an Affirmative Fair Housing Marketing Plan which, as required by federal regulations, established a goal of an integrated housing development.[2] The Circuit described the application of that requirement as follows:

> Here, the government's condition on federal funds was that some of the apartments —

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[2] As discussed *infra* at Section E, the Plan was further required in this instance by the Consent Decree in *NAACP* v. *Kemp*. Contrary to the contention of petitioners in their "Question Presented for Review," Petition at I, there has been no "misapplication" of the Consent Decree. In any event, petitioners' assertion in this regard would require an intensively fact-bound inquiry.

> which otherwise would have almost automatically been occupied by whites — be made available to all applicants on a race-blind basis. Pet. App. at 74a

Such a condition, the Court of Appeals held, no more violated the Equal Protection clause than does "[e]very anti-discrimination statute aimed at racial discrimination, and every enforcement measure taken under such a statute . . . ." *Id.* at 73a. In fact, HUD's requirement that some of the apartments be open to all applicants is even further from a "racial classification" because its objective was integration and not merely nondiscrimination. In other words, the Government's interest was not in the race of any particular applicant, but in preserving the possibility of attracting an integrated population overall at West End Place. *See Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting 114 Cong. Rec. 3422).

E. The Decision of the Court of Appeals is Consistent with Settled Law.

The conclusion of the First Circuit is consistent with the other Circuits which have examined the issue. *See e.g. Duffy* v. *Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997), *cert. den.* 118 S.Ct. 1839 (1998) (affirmative outreach does "not constitute discrimination"); *Ensley Branch, N.A.A.C.P.* v. *Seibels*, 31 F.3d 1548, 1571 (11th Cir. 1994) (outreach and recruitment are "race-neutral"). *Accord Alschuler* v. *HUD*, 515 F. Supp. 1212, 1234 (N.D. Ill. 1981), *aff'd.*, 686 F.2d 472 (7th Cir. 1982) ("purpose of the Affirmative Fair Hous-

ing Marketing Plan is not to guarantee racial quotas or racially integrated projects . . . [but] to ensure that all racial groups in a marketing area have knowledge of and an opportunity to rent units in a particular building"), *aff'd.*, 686 F.2d 472 (7th Cir. 1982).

Petitioners' effort to suggest a conflict among the circuits is squarely refuted by the very case upon which they primarily rely for this dubious proposition. Contrary to the suggestion of the Petition, at 9, the court in *Lutheran Church* v. *FCC*, 141 F.3d 344 (D.C. Cir. 1998) specifically distinguished — and in fact approvingly described — the decision in *Raso*. *Id.* at n.8. The *Lutheran Church* opinion noted that constitutional principles of equal protection were not offended by the application of the requirement of federal law that "federally funded housing be available to all applicants regardless of race" to overcome a state law "housing preference." *Id.* [3]

At bottom, the Petition seeks to challenge settled principles concerning the supremacy of federal law. The context for that challenge is the interplay between the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (including the duty imposed on HUD by Section 3608 to affirmatively further fair housing in the use of federal funds) on the one hand, and a state statutory preference for "families displaced" by urban

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[3] Unlike *Lutheran Church*, in the selection of West End Place tenants there was not even an opportunity to tilt selections toward members of a particular race because all selections were made by lottery.

renewal activity nearly forty years ago.[4] *See* M.G.L. c. 121B, § 49.

The issue raised has long been resolved by reference to the Supremacy Clause. *See e.g. Katzenbach* v. *Morgan*, 384 U.S. 641, 647 (1966) (race-neutral voting rule "cannot be enforced to the extent it is inconsistent with" the federal Voting Rights Act). In fact, the Fair Housing Act includes a specific statutory provision rendering invalid any state law that "purports to require or permit any action that would be a discriminatory housing practice under" the Act. 42 U.S.C. § 3615.[5]

The challenge is even less worthy of the Court's attention as the very state statute upon which petitioners rely explicitly conditions the "preference" on compliance with federal law. *See* M.G.L. c. 121B, § 49. As a result, petitioners never had an "absolute" preference of the sort they now claim to any units at West End Place. In addition, the "preference" claimed by petitioners conflicts with the terms of a federal

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[4] It is far from clear that almost forty years after enactment of M.G.L. c. 121B, § 49, the former West Enders are entitled to any preference. They are entitled to the preference only upon demonstration that they are "displaced" persons. Nearly four decades after displacement, the former West Enders are not as a legal matter "displaced" within the meaning of the state law, M.G.L. c. 121B, § 49.

[5] The same result is dictated to the extent the issue is framed as a conflict between the HUD regulations requiring adoption of a Fair Housing Marketing Plan, *see e.g.*, 24 C.F.R. § 850.151(g), and the state statute. *City of New York* v. *FCC*, 486 U.S. 57 (1988) ("statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof").

court consent decree entered in the case of *N.A.A.C.P.* v. *Kemp*, 721 F.Supp. 361 (D. Mass. 1989).[6]

Finally, the instant matter arises from unique circumstances. The issue is not of any broader significance because it relates to an *ad hoc* administrative decision arising, as the Court of Appeals noted, from "the peculiar interplay of Boston's consent decree, the Massachusetts statute, and the respective racial composition of the Boston population and the former West Enders." Pet. App. at 75a-76a.

F. The Rule Urged by Petitioners Would Preclude Federal Agency Enforcement Actions.

As Judge Boudin noted in the decision below, to adopt petitioners' position would be to prohibit "[e]very antidiscrimination statute aimed at racial discrimination, and every enforcement measure taken under such a statute" because they "reflect a concern with race." Pet. App. at 73a. Such a contention stands in clear conflict with the settled law concerning the obligation of HUD to affirmatively promote integrated housing in the course of expending federal funds. As the court held in *Otero* v. *New York City Hous. Auth.*, 484

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[6] The court in *Kemp* found that HUD had failed to comply with its statutory obligation to promote fair housing through its housing funding programs. Subsequently the parties executed, and the court approved, a Consent Decree designed to remedy the prior violations of the Fair Housing Act. Among other provisions, it required the adoption of Affirmative Fair Housing Marketing Plans designed to promote racially integrated housing in neighborhoods of Boston which are predominately white. Contrary to the suggestion of the Petition, at 5-6, 26, the Decree remains in full force and has not been the subject of any "sunset clause." *See* Order of June 21, 1996.

F.2d 1122, 1134 (2d Cir. 1973), Section 3608(d)(5) of the Fair Housing Act

> requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built. Action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation . . . .

This Court has also recognized that the goal of the Fair Housing Act is to "replace the ghettos 'by truly integrated and balanced living patterns.'" *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting 114 Cong. Rec. 3422).

On petitioners' view, HUD would be barred from considering the impact on segregative housing patterns of proposed uses of federal funds. Such a result would mean, for example, that HUD would not be able to decline to fund a project because of a concern about promotion of segregation.

Likewise, HUD would be barred from requiring that an applicant submit an Affirmative Fair Housing Marketing Plan. These Plans represent an important tool by which prospective residents of all races learn of federally-subsidized housing opportunities. A rule precluding the use of such racially neutral outreach efforts would squarely conflict with the fundamental purposes of the Fair Housing Act.

CONCLUSION

The Petition should be denied because the claims of petitioners for injunctive and monetary relief have been rendered moot as a result of the fact that the four named plaintiffs — as well as the remaining members of the putative class — have all received apartments or declined to pursue housing at West End Place. In short, the expected shortfall between the number of interested, qualified former West Ender applicants and the number of available apartments, has simply not materialized. The consequent absence of a live "case or controversy" powerfully counsels against the exercise of the Court's *certiorari* power.

Further, consistent with settled law, the Court of Appeals correctly rejected petitioners' request that — in addition to the fifty five percent (55%) of apartments already set aside solely for the all-white group of former West Enders — the remaining apartments should be kept from the general public where applicants of all races would have a fair chance to obtain one through the lottery. Such an outcome would have rendered futile any effort to promote integration of the development, thereby violating the Fair Housing Act and what this Court has recognized as the "strong national commitment to promote integrated housing." *Linmark Assoc's Inc.* v. *Township of Willingboro*, 431 U.S. 85, 94-95 (1977) (citing *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972)). Petitioners' contention that this national policy (and the specific statutory requirement that HUD affirmatively further fair housing in its expenditure of federal funds)

should give way to an explicitly conditional state law "preference" lacks support in law and logic.

Respectfully submitted,

ROBERT H. KUEHN, JR., KEEN DEVELOPMENT CORPORATION, MICHAEL F. GRODEN, PLANNING OFFICE FOR URBAN AFFAIRS, INC., LOWELL SQUARE ASSOCIATES JOINT VENTURE, LOWELL SQUARE COOPERATIVE LIMITED PARTNERSHIP, LOWELL SQUARE NOMINEE TRUST, MALONEY PROPERTIES, INC. AND MARK MALONEY,

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Exhibit D
Letter of September 17, 1997 to Richard Nedd ... 9a

APPENDIX A.

SUPREME COURT OF THE UNITED STATES

DOCKET NO. 97-1748

ALFRED J. RASO, et al.,	)
Petitioners,	)
v.	)
MARISA LAGO, et al.,	)
Respondents	)

AFFIDAVIT OF MARK MALONEY

I, Mark Maloney, hereby depose and state:

1. I am President of Maloney Properties, Inc. ("Maloney Properties"). Maloney Properties is a professional real estate management company and has been engaged by the developers of West End Place to handle the marketing and management of West End Place.

2. As President of Maloney Properties, I have knowledge of the selection process for applicants for apartments at West End Place.

3. As of February 4, 1998 all of the qualified applicants in the lottery process who identified themselves as former residents of the West End had been offered apartments at West End Place. Each of these applicants was offered apartments in the same time period that apartments were offered to applicants who were not former residents of the West End.

4. Attached hereto are the following documents reflecting the status of the applications of the four named plaintiffs in the instant action:

Exhibit A	A summary chart reflecting status of each named plaintiff
Exhibit B	Letter of June 2, 1997 to Alfred Raso
Exhibit C	Letter of July 21, 1997 to Frank Lavine
Exhibit D	Letter of September 17, 1997 to Richard Nedd

5. In the course of the selection process approximately eight hundred six (806) applicants were removed for failure to respond and approximately two hundred forty-five (245) applicants were removed at their request. Both categories included both former West End residents and other applicants.

6. As described in Exhibit A, of the four named plaintiffs, one never applied at all; one requested to be removed from

the waiting list; and two were removed for failing to respond to efforts to reach them by mail and telephone.

Signed under the pains and penalties of perjury this 18th day of June, 1998.

/s/

Mark Maloney

EXHIBIT A.

Name	Status
Mr. Frank Lavine	Removed 7/21/97 due to no response from attempts to reach him by mail or telephone.
Mr. T. Richard Nedd	Removed 9/17/97 due to no response from attempts to reach him by mail or telephone.
Mr. Alfred J. Raso	Removed 6/2/97 per Mr. Raso's request to be removed.
Ms. Joan Belinski Calabro	Never applied.

EXHIBIT B.

150 Staniford Street
Boston, MA 02114

Phone (617) 720-4646
Fax (617) 725-1888

WEST

END

PLACE

June 2, 1997

Mr. Alfred J. Raso
1374 Broadway 6D
Somerville, MA 02144

Certified # Z 389 745 499

Dear Mr. Raso:

This letter is to confirm our recent conversation requesting that your name be removed from the West End Wait List.

If you have any further questions, please do not hesitate to contact us at 720-4646.

Thank you for your interest in West End Place.

Very truly yours,

/s/

Cindy McGourty
Occupancy Manager

cos.soc

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EQUAL HOUSING OPPORTUNITY / EQUAL OPPORTUNITY EMPLOYER
FOR DISABILITY ACCESS INFORMATION CALL 617-449-7887 EXT 255
TDD #1-800-439-2370

EXHIBIT C.

150 Staniford Street
Boston, MA 02114

Phone (617) 720-4646
Fax (617) 725-1888

WEST

END

PLACE

July 21, 1997

Mr. Frank Lavine
20 Hillside Avenue
Medford, MA 02155

Dear Mr. Lavine:

This letter is to inform you that because we have no heard from you regarding your selection of an apartment, we are assuming that you are no longer interested in a unit at West End Place. We have, therefore, removed your name from our waiting list.

If you have any questions, please do not hesitate to call me. Thank you for your interest in West End Place.

Sincerely,

/s/

Mark Driscoll
Rental Agent

Certified Return Receipt #: Z256 770 938

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EQUAL HOUSING OPPORTUNITY / EQUAL OPPORTUNITY EMPLOYER
FOR DISABILITY ACCESS INFORMATION CALL 617-449-7887 EXT 255
TDD #1-800-439-2370

EXHIBIT D.

150 Staniford Street
Boston, MA 02114

Phone (617) 720-4646
Fax (617) 725-1888

WEST

END

PLACE

September 17, 1997

Mr. T. Richard Nedd
108 Porter Street
Malden, MA 02148

Dear Mr. Nedd:

We have been trying unsuccessfully to contact you via telephone, therefore, your name has been removed from the waiting list at West End Place.

If you have any further questions, please do not hesitate to contact us at 720-4646.

Thank you for your interest in West End Place.

Very truly yours,

/s/

Cindy McGourty
Occupancy Manager

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